

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARTIN W. JONES,	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	CIVIL ACTION NO. 19-CV-4678
	:	
TONY MARSAGLIA, <i>et al.</i> ,	:	
<i>Defendants.</i>	:	

**ORDER**

AND NOW, this 29th day of October, 2019, upon consideration of Plaintiff Martin W. Jones's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 2), and Complaint (ECF No. 3), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED**.
2. Martin W. Jones, #NN-4778, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Rockview or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Jones's inmate account; or (b) the average monthly balance in Jones's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Jones's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding

month's income credited to Jones's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court shall **SEND** a copy of this Order to the Superintendent of SCI Rockview.

4. The Complaint is **DEEMED** filed.

5. For the reasons discussed in the Court's Memorandum, the following claims are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii): (1) claims based on the interception and review of Jones's phone calls in April of 2018; and (2) claims based on any failure to read *Miranda* warnings to Jones before questioning him.

6. Jones's claims based on his April 11, 2018 arrest are **DISMISSED WITHOUT PREJUDICE**, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The dismissal is without prejudice to Jones filing a new case raising these claims only in the event his underlying convictions are reversed, vacated, or otherwise invalidated.

7. Jones's claims against all Defendants in their official capacities are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons discussed in the Court's Memorandum.

8. Jones is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible claim against the Defendants in their official capacities, *i.e.* for municipal liability. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Jones's claims against each defendant, and shall bear the title "Amended Complaint" and the case number

19-4678. If Jones files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Jones's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case. When drafting his amended complaint, Jones should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

9. If Jones does not file an amended complaint, the Court will direct service of his remaining claims, *i.e.*, his Fourth Amendment claims against the Defendants in their individual capacities based on the entry into and search of his residence on April 11, 2018 and the search of his cell phone on January 2, 2018. Jones may also notify the Court that he seeks to proceed on these claims rather than file an amended complaint. If he files such a notice, Jones is reminded to include the case number for this case, 19-4678.

**BY THE COURT:**

*/s/ Gerald J. Pappert*

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**GERALD J. PAPPERT, J.**